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MAR 06 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 3, 2000

Magalie R. Salas, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation by Intermedia Communications Inc.

In the Matter of:

Access Charge Reform)	CC Docket No. 96-262
Price Cap Performance Review)	CC Docket No. 94-1
Interexchange Carrier Purchases)	CC Docket No. 96-45
of Switched Access Services)	
Petition of U S West)	CC Docket No. 99-249
Communications, Inc.)	

Dear Ms. Salas:

Pursuant to Sections 1.1206(b)(1) and (2) of the Commission's Rules, Intermedia Communications Inc. ("Intermedia"), and by its undersigned counsel, submits this notice in the above-captioned docketed proceedings of oral and written *ex parte* presentations made on March 1, 2000. The presentations were made by Heather Gold, Vice President, Industry Policy, Intermedia, and Jonathan Canis of Kelley Drye & Warren LLP. The presentations were made to:

KELLEY DRYE & WARREN LLP

March 3, 2000

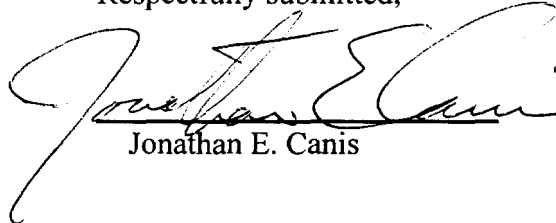
Page Two

Michelle Carey, Chief, Policy and Program Planning Division
John Reel, Attorney-Advisor, Policy and Program Planning Division

During the presentations, Intermedia discussed a variety of issues related to the appropriate forms of compensation that should apply to ISP-bound traffic terminated between interconnected local carriers. Specifically, Intermedia urged the Commission to expeditiously issue an order finding that the appropriate level of compensation for ISP-bound dial-up calls is the reciprocal compensation rate that applies to local traffic passed between interconnected local exchange carriers, unless and until a state regulatory commission sets some other form of TELRIC-based compensation. Intermedia also asked the Commission to take other action to prevent harassing litigation by ILECs on this matter. During the presentations, two written pieces were distributed. Copies are attached to this notice.

Pursuant to the Commission's rules, Intermedia submits an original and a copy of this notice of *ex parte* contact by hand delivery for inclusion in the public record of the above-referenced proceedings. Please direct any questions regarding this matter to the undersigned.

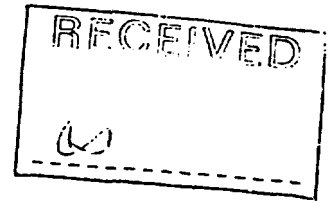
Respectfully submitted,



Jonathan E. Canis

cc: Michelle Carey, Chief, Policy and Program Planning Division
John Reel, Attorney-Advisor, Policy and Program Planning Division
International Transcription Service

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION



Complaint of Intermedia Communications Inc.,
against BellSouth Telecommunications, Inc., for
Breach of Terms of Florida Interconnection
Agreement under Sections 251 and 252 of the
Telecommunications Act of 1996, and Request
for Relief

DOCKET NO.

FILED: October 8, 1999

COMPLAINT OF INTERMEDIA COMMUNICATIONS INC.

Intermedia Communications Inc. ("Intermedia"), through its counsel, pursuant to Section 364.01, Florida Statutes, 47 U.S.C §252 (e)(1) and Iowa Utilities Board v. F.C.C., 120 F.3d 753 (8th Cir. 1997), aff'd in part and rev'd in part, AT&T Corp. v. Iowa Utilities Bd., 119 S.Ct. 721 (1999), hereby files this Complaint against BellSouth Telecommunications, Inc., ("BellSouth") for breach of the terms of the Interconnection Agreement dated June 21, 1996, by and between BellSouth and Intermedia (the "Agreement"). As grounds for this Complaint and demand for relief, Intermedia states as follows:

I. INTRODUCTION

1. This is an administrative action to enforce the terms of the Agreement, approved by this Commission in Order No. PSC-96-1236-FOF-TP, issued on October 7, 1996, in Docket No. 960769-TP.

II. JURISDICTION

2. The exact name and address of the Complainant is:

INTERMEDIA COMMUNICATIONS INC.
3625 Queen Palm Drive
Tampa, Florida 33619

3. All notices, pleadings, orders and other documents submitted in this proceeding should be provided to the following persons:

Scott Sapperstein, Senior Policy Counsel
INTERMEDIA COMMUNICATIONS INC.
3625 Queen Palm Drive
Tampa, Florida 33619
Tel: (813) 829-0011
Fax: (813) 829-4923

Patrick Knight Wiggins
WIGGINS & VILLACORTA, P.A.
2145 Delta Boulevard
Suite 200
Tallahassee, Florida 32303
Tel: (850) 385-6007
Fax: (850) 385-6008

Jonathan E. Canis
Enrico C. Soriano
KELLY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
Tel: (202) 955-9600
Fax: (202) 955-9792

4. The complete name and principal place of business of the Respondent to the
Complaint is:

BellSouth Telecommunications, Inc.
675 West Peachtree Street
Atlanta, Georgia 30375

5. Intermedia is, and at all material times has been, a competitive local exchange
carrier authorized to provide telecommunications services, including telephone exchange,
exchange access, and telephone toll, in Florida. BellSouth is, and at all material times has been,
an incumbent local exchange carrier in Florida.

6. Section 251(a)(1) of the Telecommunications Act of 1996 (the "Act"). 47 U.S.C. § 251(a)(1), obligates all telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251(b)(5) of the Act. 47 U.S.C. § 251(b)(5), obligates Intermedia and BellSouth, as "local exchange carriers" ("LECs") under the Act, to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." Section 252 of the Act, 47 U.S.C. § 252, governs the manner in which interconnection is negotiated between interconnecting telecommunications carriers.

7. Pursuant to Section 252 of the Act, 47 U.S.C. § 252, Intermedia and BellSouth negotiated the Agreement and filed it with this Commission on June 25, 1996. In accordance with Section 252(e) of the Act, 47 U.S.C. § 252(e), the Commission approved the Agreement as noted above on October 7, 1996. The portions of the Agreement relevant to this Complaint (Section IV and Attachment B-1) are attached hereto and incorporated herein by reference as Exhibit A.¹

8. Pursuant to the terms of the Agreement, Intermedia and BellSouth have interconnected their networks to enable end-user customers subscribing to Intermedia's local exchange service to place calls to end-user customers subscribing to BellSouth's local exchange service, and vice versa.

¹ On February 16, 1999, Intermedia and BellSouth executed an amendment to the Agreement, which among other things, extended the effect of the Agreement as amended from time to time until December 31, 1999. This amendment was filed with the Commission for approval on February 18, 1999. It was approved in Order No. PSC-99-0632-FOF-TP, issued April 2, 1999, in Docket No. 990187-TP.

9. On June 3, 1998, Intermedia and BellSouth executed an "Amendment to Master Interconnection Agreement Between Intermedia Communications Inc. and BellSouth Telecommunications, Inc. Dated July 1, 1996" (the "Amendment"), which is material to this Complaint. The Amendment was filed with the Commission on July 13, 1998. In accordance with Section 252(e) of the Act, 47 U.S.C. § 252(e), the Commission approved the Amendment in Order No. PSC-98-1347-FOF-TP, issued October 21, 1998, in Docket No. 980879-TP. A copy of the Amendment is attached hereto and incorporated herein by reference as Exhibit B.

10. By the terms of the Agreement, the parties may petition the Commission for a resolution of any dispute that arises as to the interpretation of any provision of the Agreement.²

11. The Commission has jurisdiction to consider this Complaint pursuant to Sections 364.01, 364.03, and 364.285, Florida Statutes.

12. The Commission also is authorized under the Act to adjudicate disputes relating to the interpretation and enforcement of interconnection agreements. This authority was explicitly recognized by the Eighth Circuit Court of Appeals in Iowa Utilities Board v. F.C.C., supra.³

13. Thus, the Commission has jurisdiction to interpret and enforce the terms of the Agreement and the Amendment under both federal and state statutes.

² Section XXIII.

³ The court stated that "We believe that the state commission's plenary authority to accept or reject [interconnection agreements] necessarily carries with it the authority to enforce the provisions of agreements that the state commissions have approved." 120 F.3d at 804. That portion of the Eighth Circuit's opinion was vacated by the Supreme Court on ripeness grounds. AT&T Corp., supra.

III. STANDING

14. Intermedia's substantial interest in this Complaint is the enforcement of the Agreement between Intermedia and BellSouth with respect to the application of the appropriate reciprocal compensation rate for transport and termination of local traffic.

15. Accordingly, Intermedia has standing to bring this Complaint for hearing before this Commission pursuant to Section 120.569(1), Florida Statutes, Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478,482 (Fla. 2d DCA 1981) and Section 252 of the Act.

IV. ALLEGATIONS OF FACT

16. Section IV.B of the Agreement states, in relevant part, that "[e]ach party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1." Attachment B-1, in turn, establishes the applicable reciprocal rate for local traffic termination as \$0.01056 per minute of use ("MOU"). Intermedia has exchanged local traffic with BellSouth on the basis of that provision.

17. On September 15, 1998, the Commission issued Order No. PSC-98-1216-FOF-TP⁴ in Docket No. 980495-TP,⁵ in which it determined that the parties were obligated under the Agreement to pay reciprocal compensation for the transport and termination of telephone exchange service that is terminated to end-user customers who are internet service providers. A copy of the Commission's decision is attached hereto and incorporated herein by reference as Exhibit C.

⁴ Pending decision in Case No. 4:98 CV 352-RH, U.S. District Court, Northern District of Florida.

18. On January 8, 1999, Intermedia made demand on BellSouth for payment in the amount of \$23,617,329.00 for reciprocal compensation due and owing as of November 30, 1998. A copy of the letter is attached hereto and incorporated herein by reference as Exhibit D. BellSouth was unresponsive to Intermedia's demand.

19. On April 20, 1999, the Commission issued Order No. PSC-99-0758-FOF-TP, in which it denied BellSouth's motion for a stay of Order No. PSC-98-1216-FOF-TP. A copy of the Commission's decision is attached hereto and incorporated herein by reference as Exhibit E.

20. On May 4, 1999, Intermedia made demand again on BellSouth for payment---this time in the amount of \$34,563,780.40---for reciprocal compensation due and owing as of March 30, 1999. A copy of the demand letter is attached hereto and incorporated herein by reference as Exhibit F. BellSouth responded on May 11, 1999, stating that it "will continue the status quo." A copy of BellSouth's response is attached hereto and incorporated herein by reference as Exhibit G.

21. On July 2, 1999, pursuant to the Commission's order, BellSouth sent Intermedia a check in the amount of \$12,723,883.38, claiming it to be payment of reciprocal compensation owed to Intermedia through April 1999. A copy of BellSouth's transmittal is attached hereto and incorporated herein by reference as Exhibit H.

22. On July 13, 1999, Intermedia wrote a letter to BellSouth stating that the amount of the check was not adequate to compensate Intermedia for the reciprocal compensation traffic that Intermedia had terminated for BellSouth through April 1999. Intermedia stated, moreover, that it

⁵ Docket No. 980495-TP was consolidated with Docket Nos. 971478-TP, 980184-TP and 980499-TP, the

could not discern the method BellSouth used to calculate the amount remitted on the basis of BellSouth's accompanying spreadsheet, but that it would shortly advise BellSouth of the correct amount to be paid. A copy of Intermedia's letter is attached hereto and incorporated herein by reference as Exhibit I.

23. On July 26, 1999, Intermedia wrote a follow-up letter to BellSouth, demonstrating with the support of a spreadsheet that the correct amount BellSouth still owed to Intermedia for the period in question, after accounting for prior BellSouth payments to date, was \$37,664,908.70,⁶ leaving a balance outstanding of \$24,841,025.32. A copy of Intermedia's letter is attached hereto and incorporated herein by reference as Exhibit J.

24. In addition, in the July 26, 1999, letter, Intermedia advised BellSouth that for the months of May and June 1999, BellSouth owed still a balance outstanding of \$6,672,925.23.⁷ Thus, accounting for the payment of \$12,723,883.38, BellSouth owes Intermedia still an amount of \$31,513,950.55⁸ for reciprocal compensation traffic terminated through the end of June 1999 in Florida.

25. The rates established in the Agreement at Attachment B-1 have been effective at all times pertinent to this Complaint, and presently remain effective for the duration of the Agreement.⁹ The composite rate for DS-1 tandem switching is \$0.01056 per MOU. Intermedia has, without exception, remitted monthly invoices to BellSouth for reciprocal compensation

complaints of MCIMetro, TCG and WorldCom, respectively.

⁶ \$3,546,628.85 of this amount consists of late payment charges, which were not calculated correctly according to Section IV.B. of the Agreement. Intermedia will advise BellSouth of the correct amount of late payment charges after recalculating it on the basis of BellSouth's obligation to pay quarterly.

⁷ This amount consists of \$36,869.80 in late payment charges, subject to the same calculation error.

⁸ This amount is subject to adjustment upon recalculation of late payment charges.

based on this rate. from the invoice for February 1997 services to the most recent invoice for July 1999 services. See Exhibit J.

26. BellSouth refuses to pay the composite rate of \$0.01056 per MOU for compensable traffic occurring after June 2, 1998. Rather, BellSouth unilaterally applies a rate of \$0.00200 per MOU for local tandem switching.¹⁰ BellSouth justifies this five-fold reduction on the claim that the Amendment, by its terms, sets new rates that are unconditionally and universally applicable to every exchange of local traffic between BellSouth and Intermedia. Specifically, in a letter dated August 27, 1999, from Ms. Nancy White, General Counsel-Florida for BellSouth to Mr. Scott Sapperstein, Senior Policy Counsel for Intermedia, BellSouth takes the following position:

The intent of the June 3, 1998 Amendment to the Interconnection Agreement between Intermedia and BellSouth, which was signed by both parties, was to establish elemental rates for local traffic. The Amendment specifically states in paragraph 3 that "The Parties agree to bill Local traffic at the elemental rates specified in Attachment A." Additionally, paragraph 4 provides for "...reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A." (emphasis added)

A copy of BellSouth's letter is attached hereto and incorporated herein by reference as Exhibit K.

27. The plain language and meaning of the Amendment is diametrically opposed to BellSouth's interpretation.

28. BellSouth's attempt to apply the elemental rates specified in the Amendment by improperly severing the rate provision from the rest of the Amendment must fail because of the

¹⁰ See supra note 1.

manner in which the rates are positioned in the Amendment. In particular, the elemental rates are placed beneath the following introductory statement:

Multiple Tandem Access shall be available according to the following rates for local usage.¹¹

This language clearly ties the elemental rates in the Amendment to the implementation of MTA.

29. The Amendment states, in relevant part:

The Parties agree that BellSouth will, upon request, provide, and [Intermedia] will accept and pay for, Multiple Tandem Access, otherwise referred to as Single Point of Interconnection, as defined in 2. following¹². (emphasis added).

Multiple Tandem Access, in turn, is defined as an

arrangement [which] provides for ordering interconnection to a single access tandem, or, at a minimum, less than all access tandems within the LATA for [Intermedia's] terminating local and intraLATA toll traffic and BellSouth's terminating local and intraLATA toll traffic along with transit traffic to and from other ALECs, Interexchange carriers, Independent Companies and Wireless Carriers. This arrangement can be ordered in one way trunks and/or two way trunks or Super Group. One restriction to this arrangement is that all of [Intermedia's] NXXs must be associated with these access tandems; otherwise, [Intermedia] must interconnect to each tandem where an NXX is "homed" for transit traffic switched to and from an Interexchange Carrier.¹³

30. The Amendment simply allows Intermedia to request from BellSouth Multiple Tandem Access (MTA), if desired by Intermedia, and sets the terms and conditions for the

¹⁰Intermedia is unable to determine the source for this rate. It does not appear in Attachment A of the Amendment as BellSouth claims.

¹¹ Amendment, Attachment A.

¹² Amendment, Item 1.

provision of MTA where requested by Intermedia.

31. Intermedia has never requested that BellSouth provide MTA to Intermedia pursuant to the Amendment. BellSouth has never provided MTA to Intermedia under the Amendment pursuant to Intermedia's request. Likewise, Intermedia has never accepted the provisioning of MTA by BellSouth under the Amendment. Currently, and at all times material to this proceeding, Intermedia, to the best of its knowledge, has direct interconnection trunks to each and every tandem in the relevant Local Access and Transport Areas.

32. On information and belief, BellSouth has also applied an incorrect rate for computing compensation due to Intermedia for compensable local traffic occurring before June 3, 1998. Specifically, BellSouth appears to have applied a rate of \$0.01028 per MOU rather than the correct rate of \$0.01056 per MOU. See Exhibit H, page 6.

33. Thus, BellSouth has denied, continues to deny, Intermedia the full compensation to which it is entitled under the Agreement. Accordingly, BellSouth is in breach of the Agreement.

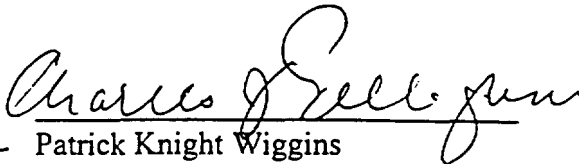
V. REQUEST FOR RELIEF

WHEREFORE, Intermedia requests that the Commission (1) find that BellSouth is in breach of the Agreement; (2) determine that the appropriate rate to be applied at all times under the Agreement for purposes of reciprocal compensation for the transport and termination of local traffic is the rate of \$0.01056 per MOU for DS-1 tandem switching as established in the Agreement at Attachment B-1; (3) upon that determination, order BellSouth to remit full

¹³ Amendment, Item 2.

payment to Intermedia without delay, including payment of late payment charges pursuant to the Agreement; (4) require BellSouth to apply the correct rate for compensable local traffic occurring before June 3, 1998; and (5) grant such other relief as the Commission deems appropriate.

Respectfully submitted.


for Patrick Knight Wiggins
WIGGINS & VILLACORTA, P.A.
2145 Delta Boulevard, Suite 200
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Counsel for Intermedia Communications Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand delivery* this 8th day of October, 1999, to the following:

Nancy B. White*
c/o Nancy Sims
BellSouth
Telecommunications, Inc.
150 South Monroe Street, #400
Tallahassee, FL 32301

Cathy Bedell
Florida Public Service
Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



Charles J. Pellegrini

Service access provided by two or more LECs and/or ALECs or by one LEC in two or more states within a single LATA.

II. Purpose

The parties desire to enter into this Agreement consistent with all applicable federal, state and local statutes, rules and regulations in effect as of the date of its execution including, without limitation, the Act at Sections 251, 252 and 271 and to replace any and all other prior agreements, both written and oral, including, without limitation, that certain Stipulation and Agreement dated December 7, 1995, applicable to the state of Florida concerning the terms and conditions of interconnection. The access and interconnection obligations contained herein enable ICI to provide competing telephone exchange service and private line service within the nine state region of BellSouth.

III. Term of the Agreement

A. The term of this Agreement shall be two years, beginning July 1, 1996.

B. The parties agree that by no later than July 1, 1997, they shall commence negotiations with regard to the terms, conditions and prices of local interconnection to be effective beginning July 1, 1998.

C. If, within 135 days of commencing the negotiation referred to in Section II (B) above, the parties are unable to satisfactorily negotiate new local interconnection terms, conditions and prices, either party may petition the commissions to establish appropriate local interconnection arrangements pursuant to 47 U.S.C. 252. The parties agree that, in such event, they shall encourage the commissions to issue its order regarding the appropriate local interconnection arrangements no later than March 1, 1997. The parties further agree that in the event the Commission does not issue its order prior to July 1, 1998 or if the parties continue beyond July 1, 1998 to negotiate the local interconnection arrangements without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the parties, will be effective retroactive to July 1, 1998. Until the revised local interconnection arrangements become effective, the parties shall continue to exchange traffic pursuant to the terms and conditions of this Agreement.

IV. Local Interconnection

A. The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement. The parties agree that the exchange of traffic on BellSouth's EAS routes shall be considered as local traffic and compensation for the termination of such traffic shall be pursuant to the terms of this section. EAS routes are those exchanges within an exchange's Basic

Local Calling Area, as defined in Section A3 of BellSouth's General Subscriber Services Tariff.

B. Each party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, by this reference incorporated herein. The charges for local interconnection are to be billed monthly and payable quarterly after appropriate adjustments pursuant to this Agreement are made. Late payment fees, not to exceed 1% per month after the due date may be assessed, if interconnection charges are not paid, within thirty (30) days of the due date of the quarterly bill.

C. The first six month period after the execution of this Agreement is a testing period in which the parties agree to exchange data and render billing. However, no compensation during this period will be exchanged. If, during the second six month period, the monthly net amount to be billed prior to the cap being applied pursuant to subsection (D) of this section is less than \$40,000.00 on a state by state basis, the parties agree that no payment is due. This cap shall be reduced for each of the subsequent six month periods as follows: 2nd period--\$40,000.00; 3rd period--\$30,000.00; and 4th period--\$20,000.00. The cap shall be \$0.00 for any period after the expiration of this Agreement but prior to the execution of a new agreement.

D. The parties agree that neither party shall be required to compensate the other for more than 105% of the total billed local interconnection minutes of use of the party with the lower total billed local interconnection minutes of use in the same month on a statewide basis. This cap shall apply to the total billed local interconnection minutes of use measured by the local switching element calculated for each party and any affiliate of the party providing local exchange telecommunications services under the party's certificate of necessity issued by the Commission. Each party will report to the other a Percentage Local Usage ("PLU") and the application of the PLU will determine the amount of local minutes to be billed to the other party. Until such time as actual usage data is available or at the expiration of the first year after the execution of this Agreement, the parties agree to utilize a mutually acceptable surrogate for the PLU factor. The calculations, including examples of the calculation of the cap between the parties will be pursuant to the procedures set out in Attachment A, incorporated herein by this reference. For purposes of developing the PLU, each party shall consider every local call and every long distance call. Effective on the first of January, April, July and October of each year, the parties shall update their PLU.

E. The parties agree that there are three appropriate methods of interconnecting facilities: (1) virtual collocation where physical collocation is not practical for technical reasons or because of space limitations; (2) physical collocation; and (3) interconnection via purchase of facilities from either party by the other party. Rates and charges for collocation are set forth in Attachment C-13, incorporated herein by this reference. Facilities may be purchased at rates, terms and conditions set forth in BellSouth's intrastate Switched Access (Section E6) or Special Access (Section E7)

Attachment B-1
Local Interconnection Service

cc: Local Interconnection*

Description: Provides for the use of BellSouth Switching and transport facilities and common subscriber plant for connecting calls between an ALEC's Point of Interface (POI) and a BellSouth end user.

It can also be used to connect calls between an ALEC and an Interexchange Carrier (IC), and Independent Exchange Telephone Company (ICC), or a Mobile Service Service Provider (MSP), or between two ALECs.

It is furnished on a per-trunk basis. Trunks are differentiated by traffic type and directionality. There are two major traffic types: (1) Local and (2) Intermediary. Local represents traffic from the ALEC's POI to a BellSouth tandem or end office and Intermediary represents traffic originated or terminated by an ALEC which is interconnected with an IC, ICC, MSP or another ALEC.

Rates and charges will be applied as indicated below.

State(s):	Alabama						Florida					
RATE ELEMENTS	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per
DS1 Local Channel	-	-	\$133.81	LC	\$866.97	LC - First	-	-	\$133.81	LC	\$866.97	LC - First
DS1 Dedicated Transport	-	-	\$23.50	per mile	\$486.83	LC - Add'l	-	-	\$16.75	per mile	\$486.83	LC - Add'l
DS1 Common Transport	\$0.00004	per mile	\$90.00	fac. term.	\$100.49	fac. term.	\$0.00004	per mile	\$59.75	fac. term.	\$100.49	fac. term.
Local Switching LS2 (FGD)	\$0.00036	fac. term.	-	-	-	-	\$0.00036	fac. term.	-	-	-	-
Tandem Switching	\$0.00755	access mou	-	-	-	-	\$0.00878	access mou	-	-	-	-
Information Surcharge	\$0.00074	access mou	-	-	-	-	\$0.00050	access mou	-	-	-	-
Tandem Intermediary Charge**	\$0.002	access mou	-	-	-	-	\$0.002	access mou	-	-	-	-
Composite Rate-DS1 Dedicated	\$0.00978	-	-	-	-	-	\$0.01028	-	-	-	-	-
Composite Rate-DS1 Tandem Sw.	\$0.00991	-	-	-	-	-	\$0.01056	-	-	-	-	-

State(s):	Georgia						Kentucky					
RATE ELEMENTS	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per
DS1 Local Channel	-	-	\$133.81	LC	\$866.97	LC - First	-	-	\$133.81	LC	\$866.97	LC - First
DS1 Dedicated Transport	-	-	\$23.50	per mile	\$486.83	LC - Add'l	-	-	\$23.50	per mile	\$486.83	LC - Add'l
DS1 Common Transport	\$0.00004	per mile	\$90.00	fac. term.	\$100.49	fac. term.	\$0.00004	per mile	\$90.00	fac. term.	\$100.49	fac. term.
Local Switching LS2 (FGD)	\$0.00036	fac. term.	-	-	-	-	\$0.00036	fac. term.	-	-	-	-
Tandem Switching	\$0.00787	access mou	-	-	-	-	\$0.00755	access mou	-	-	-	-
Information Surcharge	\$0.00074	access mou	-	-	-	-	\$0.00074	access mou	-	-	-	-
Tandem Intermediary Charge**	\$0.002	access mou	-	-	-	-	\$0.01448	Trans/100 mou	-	-	-	-
							\$0.002	access mou	-	-	-	-
Composite Rate-DS1 Dedicated	\$0.00978	-	-	-	-	-	\$0.00978	-	-	-	-	-
Composite Rate-DS1 Tandem Sw.	\$0.00991	-	-	-	-	-	\$0.00991	-	-	-	-	-

Rates are displayed at the DS1-1.544 Mbps. level. For rates and charges applicable to other arrangement levels, refer to Section E6 of BellSouth Telecommunication's, Inc.'s IntraState Access Tariff.

The Tandem Intermediary Charge applies only to Intermediary Traffic.

DS1 Local Channel: denotes a DS1 dedicated transport facility between the ALEC's serving wire center and the ALEC's POI, also called an Entrance Facility. This element will apply when associated with services ordered by an ALEC which utilizes a BellSouth facilities. This element is not required when an ALEC is collocated.

DS1 Dedicated Transport: provides transmission and facility termination. The facility termination applies for each DS1 Interoffice Channel terminated. Can be used on the ALEC's serving wire center to the end users and office or from the ALEC's serving wire center to the tandem.

Common Transport: Composed of Common Transport facilities as determined by BellSouth and permits the transmission of calls terminated by BellSouth.

Access Tandem Switching: provides function of switching traffic from or to the Access Tandem from or to the end office switch(es). The Access Tandem Switching charge is assessed on all terminating minutes of use switched at the access tandem.

Compensation Credit (CAP): BellSouth and the ALECs will not be required to compensate each other for more than 105% of the total billed local interconnection minutes of use of the party with the lower total billed local interconnection minutes of use in the same month.

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ATTACHMENT A

AMENDMENT
TO
MASTER INTERCONNECTION AGREEMENT BETWEEN
INTERMEDIA COMMUNICATIONS, INC. and
BELL SOUTH TELECOMMUNICATIONS, INC.
DATED JULY 1, 1996

Pursuant to this Agreement (the "Amendment"), Intermedia Communications, Inc. ("ICI") and BellSouth Telecommunications, Inc. ("BellSouth") hereinafter referred to collectively as the "Parties" hereby agree to amend that certain Master Interconnection Agreement between the Parties effective July 1, 1996 ("Interconnection Agreement").

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ICI and BellSouth hereby covenant and agree as follows:

1. The Parties agree that BellSouth will, upon request, provide, and ICI will accept and pay for, Multiple Tandem Access, otherwise referred to as Single Point of Interconnection, as defined in 2. following:
2. This arrangement provides for ordering interconnection to a single access tandem; or, at a minimum, less than all access tandems within the LATA for: ICI's terminating local and intraLATA toll traffic and BellSouth's terminating local and intraLATA toll traffic along with transit traffic to and from other ALECs, Interexchange Carriers, Independent Companies and Wireless Carriers. This arrangement can be ordered in one way trunks and/or two way trunks or Super Group. One restriction to this arrangement is that all of ICI's NXXs must be associated with these access tandems; otherwise, ICI must interconnect to each tandem where an NXX is "homed" for transit traffic switched to and from an Interexchange Carrier.
3. The Parties agree to bill Local traffic at the elemental rates specified in Attachment A.
4. This amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A.
5. The Parties agree that all of the other provisions of the Interconnection Agreement, dated July 1, 1996, shall remain in full force and effect.
6. The Parties further agree that either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

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IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

Intermedia Communications, Inc.

James A. Lewis
Signature

Name

Title

Date

BellSouth Telecommunications, Inc.

Jerry D. Hendrix
Signature

Jerry D. Hendrix
Name

Director-Interconnection Services
Title

6/3/98
Date

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ATTACHMENT A

Multiple Tandem Access shall be available according to the following rates for local usage:

- Each Party's local usage will be determined by the application of its reported Percent Local Usage ("PLU") to its interstate terminating minutes of use as set forth in Paragraph 1.D. in ICI's February 24, 1997, Amendment to its Interconnection Agreement.
- The Parties agree to bill Local traffic at the elemental rates specified below:

ELEMENT	AL	FL	GA	KY	LA
Local Switching					
End Office Switching, per MOU	\$0.0017	\$0.0175	\$0.0016333	\$0.002562	\$0.0021
End Office Switching, add'l MOU ⁽¹⁾	NA	\$0.005	NA	NA	NA
End Office Interoffice Trunk Port - Shared, MOU	NA	NA	NA	NA	\$0.0002
Tandem Switching, per MOU	\$0.0015	\$0.00029	\$0.0006757	\$0.001096	\$0.0008
Tandem Interoffice Trunk Port - Shared	NA	NA	NA	NA	\$0.0003
Tandem Intermediary Charge, per MOU ⁽²⁾	\$0.0015	NA	NA	\$0.001096	NA
Local Transport					
Shared, per mile, per MOU	\$0.00004	\$0.000012	\$0.000008	\$0.0000049	\$0.0000083
Facility Termination, per MOU	\$0.00036	\$0.0005	\$0.0004152	\$0.000426	\$0.00047

ELEMENT	MS	NC	SC	TN
Local Switching				
End Office Switching, per MOU	\$0.00221	\$0.0040	\$0.00221	\$0.0019
End Office Switching, add'l MOU ⁽¹⁾	NA	NA	NA	NA
End Office Interoffice Trunk Port - Shared, MOU	NA	NA	NA	NA
Tandem Switching, per MOU	\$0.003172	\$0.0015	\$0.003172	\$0.000676
Tandem Interoffice Trunk Port - Shared	NA	NA	NA	NA
Tandem Intermediary Charge, per MOU ⁽²⁾	NA	NA	NA	NA
Local Transport				
Shared, per mile, per MOU	\$0.000012	\$0.00004	\$0.000012	\$0.00004
Facility Termination, per MOU	\$0.00036	\$0.00036	\$0.00036	\$0.00036

(1) This rate element is for use in those states with a different rate for additional minutes of use.

(2) This charge is applicable only to intermediary traffic and is applied in addition to applicable switching and/or interconnection charges.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of WorldCom Technologies, Inc. against BellSouth Telecommunications, Inc. for breach of terms of Florida Partial Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and request for relief.

DOCKET NO. 971478-TP
ORDER NO. PSC-98-1216-FOF-TP
ISSUED: September 15, 1998

Complaint of Teleport Communications Group Inc./TCG South Florida against BellSouth Telecommunications, Inc. for breach of terms of interconnection agreement under Section 252 of the Telecommunications Act of 1996, and request for relief.

DOCKET NO. 980184-TP

Complaint of Intermedia Communications, Inc. against BellSouth Telecommunications, Inc. for breach of terms of Florida Partial Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 and request for relief.

DOCKET NO. 980495-TP

Complaint by MCI Metro Access Transmission Services, Inc. against BellSouth Telecommunications, Inc. for breach of approved interconnection agreement by failure to pay compensation for certain local traffic.

DOCKET NO. 980499-TP

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

FINAL ORDER RESOLVING COMPLAINTS

APPEARANCES:

Floyd R. Self, Messer, Caparello & Self, P.A., 215 South Monroe Street, Post Office Box 1876, Tallahassee, FL 32302-1876.

On behalf of Worldcom Technologies, Inc.

Kenneth A. Hoffman and John R. Ellis, Rutledge, Ecenia, Underwood, Purnell and Hoffman, P.A., Post Office Box 551, Tallahassee, FL 32302-0551.

On behalf of Teleport Communications Group, Inc./TCG South Florida.

Donna Canzano and Patrick Knight Wiggins, Wiggins & Villacorta, P.A., 2145 Delta Boulevard, Suite 200, Tallahassee, FL 32303.

On behalf of Intermedia Communications, Inc.

Thomas K. Bond, 780 Johnson Ferry Road, Suite 700, Atlanta, GA 30342.

On behalf of MCI Telecommunications Corporation

Ed Rankin, 675 West Peachtree Street, Suite 4300, Atlanta, Georgia 30375-0001.

On behalf of BellSouth Telecommunications, Inc.

Charles J. Pellegrini, Florida Public Service Commission, Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850.

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On behalf of the Commission Staff.

CASE BACKGROUND

MFS Communications Company, Inc. (MFS), and BellSouth Telecommunications, Inc. (BellSouth), entered into a Partial Florida Interconnection Agreement pursuant to the Telecommunications Act of 1996 (Act) on August 26, 1996. The Commission approved the Agreement in Order No. PSC-96-1508-FOF-TP, issued December 12, 1996, in Docket No. 961053-TP. The Commission approved an amendment to the Agreement in Order No. PSC-97-0772-FOF-TP, issued July 1, 1997, in Docket No. 970315-TP. On November 12, 1997, WorldCom Technologies, Inc. (WorldCom), filed a Complaint Against BellSouth and Request for Relief, alleging that BellSouth has failed to pay reciprocal compensation for local telephone exchange service traffic transported and terminated by WorldCom's affiliate, MFS, to Internet Service Providers (ISPs). The complaint was assigned Docket No. 971478-TP. BellSouth filed its Answer and Response on December 22, 1997. In Order No. PSC-98-0454-PCO-TP, issued March 31, 1998, the Commission directed that the matter be set for hearing.

Teleport Communications Group, Inc./TCG South Florida (TCG), and BellSouth entered into an Interconnection Agreement pursuant to the Act on July 15, 1996. The Commission approved the Agreement in Order No. PSC-96-1313-FOF-TP, issued October 29, 1996, in Docket No. 960862-TP. On February 4, 1998, TCG filed a Complaint for Enforcement of Section IV.C of its Interconnection Agreement with BellSouth, also alleging that BellSouth has failed to pay reciprocal compensation for local telephone exchange service traffic transported and terminated by TCG to ISPs. The complaint was assigned Docket No. 980184-TP. BellSouth filed its Answer and Response on February 25, 1998.

MCImetro Access Transmission Services, Inc. (MCIm), and BellSouth entered into an Interconnection Agreement pursuant to the Act on April 4, 1997. The Commission approved the Agreement in Order Nos. PSC-97-0723-FOF-TP, issued June 19, 1997, and PSC-97-0723A-FOF-TP, issued June 26, 1997, in Docket No. 960846-TP. On February 23, 1998, MCIm filed a Complaint against BellSouth, which was assigned Docket No. 980281-TP. Among other things, MCIm also alleged in Count 13 that BellSouth has failed to pay reciprocal compensation for local telephone exchange service traffic transported and terminated by MCIm to ISPs. On April 6, 1998, MCIm filed a separate Complaint embodying the complaint set forth in

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Count 13 of the first Complaint. The separate complaint was assigned Docket No. 980499-TP.

Intermedia Communications, Inc. (Intermedia), and BellSouth entered into an interconnection Agreement pursuant to the Act on July 1, 1996. The Commission approved the Agreement in Order No. PSC-96-1236-FOF-TP, issued October 7, 1996, in Docket No. 960769-TP. The Commission approved an amended Agreement in Order No. PSC-97-1617-FOF-TP, issued December 30, 1997, in Docket No. 971230-TP.

On April 6, 1998, Intermedia filed a Complaint against BellSouth alleging that BellSouth has failed to pay reciprocal compensation for local telephone exchange service traffic transported and terminated by Intermedia to ISPs. That complaint was assigned Docket No. 980495-TP.

On March 9, 1998, GTE Florida Incorporated (GTEFL) filed a petition to intervene in this proceeding. By Order No. PSC-98-0476-PCO-TP, we denied GTEFL's petition. Subsequently, on May 6, 1998, GTEFL filed a petition to be permitted to file a brief. We denied that petition at the commencement of the hearing in these complaint dockets.

By Order No. PSC-98-0561-PCO-TP, issued April 21, 1998, the four complaints were consolidated for hearing purposes. The hearing was held on June 11, 1998.

DECISION

This case is about BellSouth's refusal to pay reciprocal compensation for the transport and termination of ISP traffic under the terms of its interconnection agreements with WorldCom, Teleport, Intermedia, and MCI. In a letter dated August 12, 1997, BellSouth notified the complainants that it would not pay compensation for the termination of ISP traffic, because "ISP traffic is jurisdictionally interstate" and "enjoys a unique status, especially [as to] call termination." The case is primarily a contract dispute between the parties, and that is the foundation of our decision below. As TCG stated in its brief, "This is a contract dispute in which the Commission must decide whose meaning is to be given to the term 'Local Traffic' in the Agreement."

Accordingly, in this decision we only address the issue of whether ISP traffic should be treated as local or interstate for purposes of reciprocal compensation as necessary to show what the

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parties might reasonably have intended at the time they entered into their contracts. Our decision does not address any generic questions about the ultimate nature of ISP traffic for reciprocal compensation purposes, or for any other purposes.

While there are four complainants in the consolidated case, their arguments contain many common threads. Also, BellSouth's position on each issue is the same, and its brief addresses all four together. For the sake of efficiency, we will address the main themes in our discussion of the WorldCom-BellSouth agreement.

We will address the particular language of the other agreements separately.

The WorldCom-BellSouth Agreement

On August 26, 1996, MFS (now WorldCom) and BellSouth entered into a Partial Interconnection Agreement, which we approved in Order No. PSC-96-1508-FOF-TP. WorldCom witness Ball testified on the pertinent provisions of that Agreement. Section 1.40 of the Agreement defines local traffic as:

[C]alls between two or more Telephone Exchange service users where both Telephone Exchange Services bear NPA-NXX designations associated with the same local calling area of the incumbent LEC or other authorized area [such as EAS]. Local traffic includes traffic types that have been traditionally referred to as "local calling" and as "extended area service (EAS)." All other traffic that originates and terminates between end users within the LATA is toll traffic. In no event shall the Local Traffic area for purposes of local call termination billing between the parties be decreased.

Section 5.8.1 provides that:

Reciprocal Compensation applies for transport and termination of Local Traffic (including EAS and EAS-like traffic) billable by BellSouth or MFS which a Telephone Exchange Service Customer originates on BellSouth's or MFS's network for termination on the other Party's network.

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The question presented for decision is, as it is in the other complaints, whether, under the WorldCom - BellSouth Florida Partial Interconnection Agreement, the parties are required to compensate each other for transport and termination of traffic to Internet Service Providers; and if they are, what relief should the Commission grant? The issue is whether the traffic in question, ISP traffic, is local for purposes of the agreements in question.

According to witness Ball, the language of the WorldCom-BellSouth Agreement itself makes it clear that the parties owe each other reciprocal compensation for the traffic in question. He stated that "if a BellSouth customer utilizes a BellSouth telephone exchange service that has a local NPA-NXX and they call a WorldCom customer that buys a WorldCom telephone exchange service that has a WorldCom NPA-NXX, that's local traffic." Witness Ball explained that this is what happens when a BellSouth local customer calls a WorldCom customer that happens to be an ISP. He pointed out that there is no exclusion for any type of customer based on what business the customer happens to be in. Witness Ball noted that where exceptions were needed for certain types of traffic, they were expressly included in the Agreement. He argued that WorldCom understood ISP traffic to be local, and if BellSouth wanted to exclude ISP calls, it was BellSouth's obligation to raise the issue at the time the Agreement was negotiated.

Witness Ball stated that "the Agreement is entirely clear and unambiguous" on the treatment of ISP traffic as local; but if we determine that the Agreement is ambiguous on this point, the ambiguities should be resolved by considering:

- (1) the express language of the Telecommunications Act of 1996;
- (2) relevant rulings, decisions and orders of this Commission;
- (3) relevant rulings, decisions and orders of the FCC interpreting the Act;
- (4) rulings, decisions and orders from other, similarly situated state regulatory agencies; and
- (5) the custom and usage in the industry.

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BellSouth witness Hendrix agreed that the contract did not specify whether ISP traffic was included in the definition of local traffic. Witness Hendrix argued, however, that it was WorldCom's obligation to raise the issue in the negotiations. In fact, the record shows that while BellSouth and the complainants all reached a specific agreement on the definition of local traffic to be included in the contracts, none of them raised the particular question of what to do with ISP traffic.

According to BellSouth, all the complainants assumed that BellSouth agreed to include ISP traffic as local. BellSouth asserts that it cannot be forced to pay reciprocal compensation just because it did not "affirmatively" except ISP traffic from the definition of 'local traffic' in negotiating the Agreement. BellSouth argues that the existing law at the time the contracts were negotiated "reflects that it was unreasonable for the Complainants to blithely assume that BellSouth agreed with their proposed treatment of ISP traffic."

It appears to us from our review of the record, however, that BellSouth equally assumed, and implied in its brief and testimony at the hearing, that the complainants in fact knew ISP traffic was interstate in nature. In its brief, BellSouth states that "parties to a contract are presumed to enter into their Agreement with full knowledge of the state of the existing law, which in turn is incorporated into and sheds light on the meaning of the parties' Agreement." BellSouth witness Hendrix asserted that the FCC had explicitly found that ISPs provide interstate services. Therefore, witness Hendrix argued, there was no need for BellSouth to believe ISP traffic would be subject to reciprocal compensation. The result of this misunderstanding, BellSouth asserts, was that the parties never had an express meeting of the minds on the scope of the definition of local traffic.

Discussion

Upon review of the language of the agreement, and the evidence and testimony presented at the hearing, we find that the Agreement defines local traffic in such a way that ISP traffic clearly fits the definition. Since ISP traffic is local under the terms of the Agreement, then, a priori, reciprocal compensation for termination is required under Section 5.3 of the Agreement. There is no ambiguity, and there are no specific exceptions for ISP traffic. Since there is no ambiguity in the language of the agreement, we need not consider any other evidence to determine the parties' obligations under the agreement. Even if there were an ambiguity

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in the language of the agreement, however, the other evidence and argument presented at the hearing leads to the same result: the parties intended to include ISP traffic as local traffic for purposes of reciprocal compensation under their agreement.

Local vs. Interstate Traffic

The first area to explore is the parties' basis for considering ISP traffic to be jurisdictionally local or interstate. BellSouth witness Hendrix contended that for reciprocal compensation to apply, "traffic must be jurisdictionally local." He argued that ISP traffic is not jurisdictionally local, because the FCC "has concluded that enhanced service providers, of which ISPs are a subset, use the local network to provide interstate services." He added that they do so just as facilities-based interexchange carriers and resellers use the local network to provide interstate services. He stated that "[t]he FCC stated in Paragraph 12 in an order dated February 14, 1992, in Docket Number 92-18, that:

Our jurisdiction does not end at the local switch, but continues to the ultimate termination of the call. The key to jurisdiction is the nature of the communication itself, rather than the physical location of the technology.

Further, according to Witness Hendrix, in its April 10, 1998, Report to Congress (CC Docket No. 96-45), "the FCC indicated that it does have jurisdiction to address whether ALECs that serve ISPs are entitled to reciprocal compensation." We will discuss that report in more detail below.

BellSouth does acknowledge in its brief that the "FCC has not held that ISP traffic is local traffic for purposes of the instant dispute before the Commission." Nor has the FCC "held that ISPs are end users for all regulatory purposes." We agree with this assessment. The FCC has not yet decided whether ISP traffic is subject to reciprocal compensation. While the FCC has determined that ISPs provide interstate services, it appears that the FCC may consider these services severable from telecommunications services, as we explain below. No FCC order delineates exactly for what purposes the FCC intends ISP traffic to be considered local. By the same token, the FCC has not said that ISP traffic cannot be considered local for all regulatory purposes. It appears that the FCC has largely been silent on the issue. This leads us to believe

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the FCC intended for the states to exercise jurisdiction over the local service aspects of ISP traffic, unless and until the FCC decided otherwise. Even Witness Hendrix agreed that the FCC intended ISP traffic to be treated as though local. He did not expound on what exactly that meant.

BellSouth contends in its brief that there is no dispute that an Internet transmission may simultaneously be interstate, international and intrastate. BellSouth also contends that the issue should be resolved in pending proceedings before the FCC. Those proceedings include one the FCC initiated in response to a June 29, 1997, letter from the Association for Local Telecommunications Services (ALTS). ALTS requested clarification from the FCC that ISP traffic is within the FCC's exclusive jurisdiction. ALTS has also asked the FCC for a ruling on the treatment of ISP traffic as local.

Regardless of what the FCC ultimately decides, it has not decided anything yet, and we are concerned here with an existing interconnection agreement, executed by the parties in 1996. Our finding that ISP traffic should be treated as local for purposes of the subject interconnection agreement is consistent with the FCC's treatment of ISP traffic at the time the agreement was executed, all pending jurisdictional issues aside.

Termination

In its brief, BellSouth places considerable emphasis on the point of termination for a call. The basic question is whether or not ISP traffic terminates at the ALEC premises. Witness Hendrix testified that "call termination does not occur when an ALEC, serving as a conduit, places itself between BellSouth and an ISP." "[I]f an ALEC puts itself in between BellSouth's end office and the Internet service provider, it is acting like an intermediate transport carrier or conduit, not a local exchange provider entitled to reciprocal compensation." "Thus, the call from an end user to the ISP only transits through the ISP's local point of presence; it does not terminate there. There is no interruption of the continuous transmission of signals between the end user and the host computers." BellSouth states in its brief that "the jurisdictional boundaries of a communication are determined by its beginning and ending points, and the ending point of a call to an ISP is not the ISP switch, but rather is the database or information source to which the ISP provides access."

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MCIm contends in its brief that BellSouth witness Hendrix' testimony that a call to an ISP terminates not at the local telephone number, but rather at a distant Internet host misunderstands the nature of an Internet call. MCIm witness Martinez contended that the ability of Internet users to visit multiple websites at any number of destinations on a single call is a clear indication that the service provided by an ISP is enhanced service, not telecommunications service. According to MCIm, this does not alter the nature of the local call. While BellSouth would have one believe that the call involved is not a local call, MCIm points out that in the case of a rural customer using an IXC to connect with an ISP, the call "is suddenly two parts again: a long distance call, for which BellSouth can charge access, followed by an enhanced service."

BellSouth argues in its brief that "in interpreting the language of a contract, words referring to a particular trade will be interpreted by the courts according to their widely accepted trade meaning." We agree, but it appears to us that BellSouth then chooses to ignore the industry standard definition of the word "termination." The other parties provided several examples of industry definitions on this point.

WorldCom witness Ball stated that "[s]tandard industry practice is that a call is terminated essentially when it's answered; when the customer that is buying the telephone exchange service that has the NPA-NXX answers the call by--whether it's a voice grade phone, if it's a fax machine, an answering machine or, in the case of an ISP, a modem."

TCG witness Kouroupas testified that the standard industry definition of "service termination point" is:

Proceeding from a network toward a user terminal, the last point of service rendered by a commercial carrier under applicable tariffs.... In a switched communications system, the point at which common carrier service ends and user-provided service begins, i.e. the interface point between the communications systems equipment and the user terminal equipment, under applicable tariffs.

Witness Kouroupas further explained that "A call placed over the public switched telecommunications network is considered 'terminated' when it is delivered to the telephone exchange bearing

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the called telephone number." Call termination occurs when a connection is established between the caller and the telephone exchange service to which the dialed telephone number is assigned, answer supervision is returned, and a call record is generated.

This is the case whether the call is received by a voice grade phone, a fax machine, an answering machine, or in the case of an ISP, a modem. Witness Kouroupas contended that this is a widely accepted industry definition.

MCIm argues in its brief that:

a "telephone call" placed over the public switched telephone network is "terminated" when it is delivered to the telephone exchange service premise bearing the called telephone number... specifically, in its Local Competition Order (Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996), ¶1040), the FCC defined terminations "for purposes of section 251(b)(5), as the switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises." MCIm terminates telephone calls to Internet Service Providers on its network. As a communications service, a call is completed at that point, regardless of the identity or status of the called party.

Witness Martinez testified that "[w]hen a BellSouth customer originates a telephone call by dialing that number, the telephone call terminates at the ISP premises, just as any other telephone call terminates when it reaches the premises with the phone number that the end user dialed."

Severability

Recent FCC documents have described Internet traffic as calls with two severable parts: a telecommunications service part, and an enhanced service part. In the May 1997 Universal Service Order at ¶789, the FCC stated:

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When a subscriber obtains a connection to an Internet service provider via voice grade access to the public switched network, that connection is a telecommunications service and is distinguishable from the Internet service provider's offering.

In that Report, the FCC also stated that ISPs "generally do not provide telecommunications." (§§ 15, 55) WorldCom argues in its brief that:

The FCC's determination that ISPs do not provide telecommunications was mandated by the 1996 Act's express distinction between telecommunications and information services. "Telecommunications" is "The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. Section 153(48). By contrast, "information services" is "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." 47 U.S.C. Sec. 153(20)

WorldCom adds that:

[t]he FCC recognized that the 1996 Act's distinction between telecommunications and information services is crucial. The FCC noted that "Congress intended 'telecommunications service' and 'information service' to refer to separate categories of services" despite the appearance from the end user's perspective that it is a single service because it may involve telecommunications components. (Report to Congress, §§56, 58) [Emphasis supplied by WorldCom]

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BellSouth argues that the complainants misinterpret the FCC's decision. BellSouth points out that this passage is only discussing whether or not ISPs should make universal service contributions. That is true; but the passage is nevertheless as significant an indication of how the FCC may view ISP traffic as the passages BellSouth has cited.

In its brief, BellSouth claims that the FCC "specifically repudiated" the two-part theory. BellSouth cites the FCC's Report to Congress, CC Docket No., 96-45, April 10, 1998, ¶220. There the FCC stated:

We make no determination here on the question of whether competitive LECs that serve Internet service providers (or Internet service providers that have voluntarily become competitive LECs) are entitled to reciprocal compensation for terminating Internet traffic. That issue, which is now before the [FCC], does not turn on the status of the Internet service provider as a telecommunications carrier or information service provider. [emphasis supplied by BellSouth]

BellSouth claims that this means the FCC believes the distinction is "meaningless in the context of the FCC's pending reciprocal compensation decision." The other parties point out, however, that it is not at all clear what the FCC means in this passage. It appears to us that the FCC is talking here about the status of the provider, not about the severability of the telecommunications service from the information service. Indeed, in the same report, the FCC brought up the severability notion, as discussed above.

BellSouth also argues that the severability theory is contradicted by the FCC's description of Internet service in its Non-Accounting Safeguards Order (Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149 (released Dec. 24, 1996), note 291), where the FCC states:

The Internet is an interconnected global network of thousands of interoperable packet-switched networks that use a standard protocol...to enable information exchange. An